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CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 324

RICHARD SMITH,

Petitioner,

against

R. H. LAWRENCE,
Warden, Georgia State Prison,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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SUPREME COURT OF THE UNITED STATES

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RICHARD SMITH,
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Respondent.

No.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To The Honorable The Chief Justice And Associate Justices Of The Supreme Court of The United States:

Your petitioner, Richard Smith, prays that a writ of *certiorari* issue to the United States Circuit Court of Appeals for the Fifth Circuit, to review the judgment of the court entered June 16, 1942, rehearing denied July 20, 1942, affirming the District Court.

And thereupon petitioner respectfully represents:

A

ORIGIN AND NATURE OF CASE

Petitioner, a negro youth of eighteen years of age, was tried in a State Court of Georgia upon a charge of murder. The only evidence offered by the State, in addition to proof

of the *corpus delicti*, was the testimony of a certain negro named Raymond Carter, a self-alleged accomplice, that petitioner hit the fatal blow, and for the required corroboration of testimony of an accomplice which was required under the Code of Georgia, a statement that was extorted by the police from petitioner, was used as a confession. The defense did not object to the use as evidence of the statement in the criminal trial, but relied upon the denial thereof by petitioner, and evidence of an alibi. Petitioner was convicted and sentenced to death. This statement was held as sufficient corroboration under the Code of Georgia, and his conviction was affirmed by the Supreme Court of Georgia. *Smith v. The State, 189 Ga. 169, 5 S. E. (2d) 761.* That after affirmance of his conviction, through different counsel, petitioner applied to a state Court of Georgia for a writ of *habeas corpus*, urging as grounds therefor, that the statement so relied upon for conviction was obtained from petitioner through compulsion, duress and coercion, and because his conviction and sentence was dependent upon said statement he was deprived of life without due process of law as guaranteed him under the Fourteenth Amendment to the Constitution of the United States.

The petition for writ of *habeas corpus* in the State Court, unlike as required by the Federal Statute, was not tried upon sworn testimony with privilege of cross-examination, but tried solely upon affidavits submitted by petitioner and the State of Georgia, and the writ was denied. An appeal to the Supreme Court of Georgia was then taken therefrom, and the denial was affirmed. *Smith v. Henderson, Warden, 190 Ga. 826, 10 S. E. (2d) 921.* Petitioner applied to this Court for a writ of *certiorari* and which was denied. *Smith v. Henderson, Warden, 312 U. S. 698, 85 L. ed. 1132.*

Petitioner having exhausted all available remedies in the State Courts of Georgia, challenged the manner in which his conviction and sentence was procured, as impairment to his right to due process as guaranteed him under the Fourteenth Amendment to the Constitution of the United States, by petition for writ of *habeas corpus* in the United States District Court for the Southern District of Georgia. The writ was denied, but the District Court granted a certificate of probable cause for an appeal from the decision (R. 307). An appeal was taken to the United States Circuit Court of Appeals for the Fifth Circuit, and the denial of the writ was affirmed (R. 322).

B

STATEMENT OF FACTS

The police of Atlanta, Georgia, in an attempt to solve the murder of a night watchman at Atlanta, Georgia, interviewed a negro, Raymond Carter, who was held in jail at Jackson, Georgia, for the murder of a Chief of Police, and who they suspected with respect to the murder of the night watchman at Atlanta. This negro had the name and address of petitioner on him (R. 263).

That after certain questioning of Raymond Carter, he gave a statement that he and petitioner, while in the act of burglarizing a certain store in Atlanta, the night watchman appeared, and who was hit in the head by petitioner with a milk bottle filled with sand. Petitioner was thereupon arrested by the police solely upon this statement, without warrant of arrest, and placed in the City Jail. Petitioner was not charged with the Crime, but held solely for investigation (R. 264). He was told when arrested they

wanted him to identify someone, if he could (R. 203). The police testified they wanted him to identify Carter, and Carter, who they had brought from Jackson, Georgia, to identify petitioner (R. 273). Petitioner was locked in a cell alone on the third floor of the jail to remain for the night. The following morning he was taken to the ground floor into a private office of the Superintendent of Police, and as the Superintendent testified, at that time he "started the investigation" (R. 252). Petitioner was then questioned by the Superintendent of Police, and three other police officers about the crime, and petitioner denied any participation therewith or knowledge thereof (R. 206, 253, 265).

The police had no evidence of whatsoever nature against petitioner, except the statement of the self-alleged accomplice (R. 273), and which, under the code of the State of Georgia, without corroboration was not admissible as evidence against petitioner. Consequently, to indict and try petitioner, it was necessary to obtain a confession from him as evidence to corroborate the statement of the self-alleged accomplice. He was therefore questioned and cross-examined by a number of police officers, admittedly by four at a time, in a private closed office (R. 272). Petitioner repeatedly denied any connection with the crime, or knowledge thereof, and he was questioned by the police as to his whereabouts on the night in question. The police wanted this to check with his denial of being implicated in the crime (R. 265). The captain of Police told him if he could show him that he did not have anything to do with the murder, he would "turn him out of jail" (R. 260).

That after being questioned and cross-questioned as to his whereabouts on the night in question, he was again

locked in the cell alone on the third floor of the jail. The second night while he was so locked in a cell on the third floor of the jail, he saw a policeman hit another negro on the head with his fists and whip him with what looked like a hose, (R. 207, 208). On the third day of his incarceration, following the night he saw this other negro being whipped, he was again brought to the ground floor to be questioned and cross-examined in a closed office. He was again so questioned and cross-examined for several hours by four police officers, and he continued to deny any guilt of the crime, or knowledge thereof. That after repeated denials, the police confronted him with the people who he named in connection with what petitioner stated, in being questioned, as to his whereabouts on the night in question to contradict him (R. 271). Petitioner was told he had to prove that he was not implicated in the crime (R. 260). The police told him that Raymond Carter had told them that he, petitioner, had killed the night watchman, and he denied it (R. 211). He was again asked to tell what he did the night in question, and he repeatedly told the police, and in detail (R. 213, 217). This consumed practically half a day (R. 268).

The police told him they could get him the death sentence on the word of Raymond Carter, the self-alleged accomplice who was held for another murder (R. 211). The Captain of the Police told him to come on and confess, and that they would make it easy on him, because they had all the evidence that they wanted to convict him and give him capital punishment (R. 213). The Captain of Police told him that his father, sister and brother had made statements against him (R. 219). That after this ordeal finally, and as testified herein by one of the officers, after he told petitioner he had sent, or would send for his sweetheart, the

reason therefor apparently being to contradict some statement of petitioner, that then this negro youth, after such continuous grilling, in the language of this officer "*he broke down* and told the story" (R. 259). He was crying during the questioning (R. 213, 260). The police admit in their testimony that "his eyes got watery once or twice" (R. 260).

Petitioner was then again questioned by the police. One of the police officers would say: "Did you not do so and so, and he would answer it" (R. 249), and this was then reduced to narrative form, and petitioner sworn to it (R. 249). The statement appears at page 152 of the record, and wherein participation in the crime is charged against petitioner.

Petitioner testified that he, while in jail, before giving the statement used by the State to convict him, he was refused permission to see a lawyer (R. 211), and he was denied the privilege to see or communicate with his family (R. 211). There is no dispute that he was held in jail without the aid of counsel, family or friends. The only dispute raised as to his being refused his request for a lawyer, but counsel for the State of Georgia only asked one of the three police officers who testified herein the question, if *he* refused him that permission, and he said "no", but none of the other officers involved herein were asked that question. That as to being refused to see or communicate with his family, while being examnied in attempt to get a confession to convict him, his sister testified she went to the jail to see him, but she was refused permission to do so. She testified that "they told me I could not see him" (R. 237). The State offered no evidence to deny this sworn testimony. He therefore was not only held incommunicado without the aid of

counsel, family or friends, but was refused this until the desired statement was obtained from him by the police, after being held incommunicado from a Sunday night until the following Tuesday about noon.

C

QUESTION INVOLVED

Was not the method and practices used by the police in obtaining the statement from petitioner, and which was used in the trial as a confession, and upon which the State of Georgia depended for the verdict, and sentence of petitioner, all as shown herein, a violation of fundamental rights, constituting a deprivation of life without due process of law, as guaranteed petitioner under the Fourteenth Amendment to the Constitution of the United States, rendering the conviction and sentence of petitioner void?

D

REASONS FOR ALLOWANCE OF THE WRIT

I The Circuit Court of Appeals for the Fifth Circuit, in holding that the method and practices of the police in obtaining from petitioner the statement used as a confession, and upon which the State depended for the verdict and sentence of death, did not constitute a violation of fundamental rights, secured petitioner by the due process clause of the Fourteenth Amendment to the Constitution of the United States, is in direct conflict with the applicable principles announced by this Court in the following decisions, to-wit:

Brown v. Mississippi, 297 U. S. 278, 80 L. ed. 682;

Chambers v. Florida, 309 U. S. 227, 241, 84 L. ed. 716;

Canty v. Alabama, 309 U. S. 629, 84 L. ed. 988;

White v. Texas, 310 U. S. 530, 84 L. ed. 1342;

Lomax v. Texas, 313 U. S. 544, 84 L. ed. 1151;

Vernon v. Alabama, 313 U. S. 547, 85 L. ed. 1513;

Ward v. Texas, 86 L. ed. (No. 15 Advanced Sheets) 1101.

II The Circuit Court of Appeals for the Fifth Circuit has failed to ~~apply~~ consider practices and methods denounced by this Court in the Chambers, Brown and White cases, *supra.*

To illustrate the above error, we quote at the lower left from this Court in the Chambers case, *supra*, as to methods and practices condemned by this Court as violative of due process of law, and opposite thereto, we refer to the facts in the instant case, showing similar practices and methods as follows:

"So far as appears, the prisoners at no time during the week were permitted to see or confer with counsel or a single friend or relative."	Petitioner herein was held from a Sunday night until the following Tuesday at noon before he made the statement, and during which time he was not permitted to see or confer with counsel or relative.
"When carried singly from his cell and subjected to questioning each found himself a single prisoner, surrounded in a fourth floor jail room by four to ten men, the county sheriff, his depu-	Petitioner after being held alone in a cell on the fourth floor of the jail, the following morning he was taken therefrom by two detectives, and brought to the Superintendent's office on

ties, a convict guard, and other white officers and citizens of the community."

the ground floor, and there questioned by the Superintendent, two detectives, and other police officers. Petitioner denied any implication in the crime was cross-examined and then returned to a cell and kept alone therein, when the following morning he was again taken to the Superintendent's office, and there again questioned by four police officers.

"Here, the record develops a sharp conflict upon the issue of physical violence and mistreatment, but shows, without conflict, the drag net methods of arrest on suspicion without warrant, and the protracted questioning and cross-questioning of these ignorant young colored tenant farmers by state officers and other white citizens, in a fourth floor jail room, where as prisoners they were without friends, advisors or counselors, and under circumstances calculated to break the strongest nerves and the strongest resistence."

Petitioner, a negro of eighteen years of age, not having completed the third grade, was as the police testified, arrested without warrant of arrest, and solely on suspicion, was incarcerated alone in a cell on the fourth floor without being charged with any offense, was questioned by at least four police officers when on the morning of the third day, and after repeated questioning and cross-questioning, was, as he testified, crying, and as the police admitted, his eyes became watery, when, finally, as one of the officers testified "he broke down and told the story."

Also in the *Chambers* case, *supra*, this Court in referring to the facts therein, and as applicable to the instant

case, stated that the prisoners were held without formal charge and which the Court said:

> "***were such as to fill petitioners with terror and frightful misgivings."

Petitioner herein was held incommunicado from a Sunday night until about noon on the following Tuesday, without being charged with any offense, and solely held for investigation.

III The Circuit Court of Appeals for the Fifth Circuit in holding that the confession herein, upon which the State of Georgia depended for conviction, was not obtained in violation of due process of law, when the undisputed facts show that petitioner was held without formal charge, could not talk to anyone but the police, and held subject to questioning by the police from a Sunday night until about noon the following Tuesday before the confession was obtained, and during which time petitioner was held without the advice of friends or counsel, is in direct conflict with in particular the decision of this Court in *Ward v. Texas, 86 L. ed. (No. 15 Advanced Sheets) 1101*, wherein this Court enumerated methods and practices in obtaining confessions upon which convictions are based as violative of due process of law, two of which are specifically applicable herein, to-wit:

(1) Confessions "extorted from ignorant persons who have been subjected to persistent and protracted questioning."

(2) Persons "who have been unlawfully held incommunicado without the advice of friends or counsel."

IV The Circuit Court of Appeals for the Fifth Circuit upon the facts involved herein, and upon the statement by the Court in its opinon herein as to the facts involved, as follows:

> "The next morning, Tuesday, he (petitioner) was questioned again, and again denied that he participated in the crime. Then after being advised that Raymond Carter had told the officers about the crime, and after being confronted with Carter, Smith (petitioner) told the story." (R. 319)

that in holding that the confession was voluntarily given, on the above statement by the Court alone, is in direct conflict with the decision of this Court in *Bram v. United States, 168 U. S. 532, 42 L. ed. 568*, and the decision of the United States Circuit Court of Appeals for the Eighth Circuit in *Sorenson v. United States, 143 F. 820*, following *Bram v. United States, supra.* The decision of the Circuit Court of Appeals for the Fifth Circuit holding that the confession herein was given voluntarily, is under the facts herein involved, also in direct conflict with the decisions of the Court of Appeals for the District of Columbia, in *Perrygo v. United States, 2 F. (2d) 181*, and the Circuit Court of Appeals for the Fourth Circuit in *Purpura v. United States, 262 F. 473*, both following *Bram v. United States, supra.*

Petitioner annexes a brief thereto.

WHEREFORE, petitioner respectfully prays that this petition for a writ of *certiorari* to review the judgment of the Circuit Court of Appeals for the Fifth Circuit, in the case numbered and entitled on its docket No. 10,107,

Richard Smith, Appellant v. R. H. Lawrence, Warden, Georgia State Prison, Appellee, be granted, and that this cause be certified to this Court for determination, and that the said judgment may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just.

Petitioner further prays that upon consideration of his affidavit filed herein with, that for the reasons therein stated he be permitted to proceed herein in *forma pauperis.*

And your petitioner will ever pray.

Richard Smith,

BY:
M. A. Grace,
Edwin H. Grace
Daniel H. Grace

JOHN D., M. A. & EDWIN H. GRACE,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

OPINIONS BELOW

The opinion of the District Court in denying the writ is not reported, but is found at pages 302-305 of the record. The District Court granted a certificate of probable cause from its decision pending the eventual outcome of appeal

therefrom (R. 307). The opinion of the Circuit Court of Appeals is not reported, but is found at pages 316-321 of the record. A petition for rehearing (R. 323-327) was denied without opinion (R. 328).

II

JURISDICTION

The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. at L. 938) Title 28 U. S. C. A. Section 347(a).

The judgment of the Circuit Court of Appeals affirming the judgment of the District Court was entered June 16, 1942 (R. 322). The petition for rehearing was denied July 20, 1942 (R. 328). A stay of the mandate was granted July 24, 1942, to permit application for writ of *certiorari* (R. 330).

III

STATEMENT

A statement of the essential facts of the case are fully set forth in the accompanying petition under hearing A, and in the interest of brevity the statement is not repeated here.

IV

SPECIFICATIONS OF ERRORS

(a) The Circuit Court of Appeals erred in holding that the statement obtained by the police from petitioner

before the trial, and which the State of Georgia used in the trial as a confession, and relied upon to convict him, was voluntarily given by petitioner.

(b) The Circuit Court of Appeals erred in failing to hold that the said statement obtained from petitioner was obtained from him under compulsion, duress and coercion.

(c) The Circuit Court of Appeals erred in failing to hold that because of the methods and practices used by the police of Atlanta in obtaining the said statement from petitioner, and upon which statement his conviction was based, constituted a violation of a fundamental right of petitioner guaranteed him under the Fourteenth Amendment to the Constitution of the United States, rendering his conviction and sentence void.

(d) The Circuit Court of Appeals erred in affirming the judgment of the District Court.

(e) The Circuit Court of Appeals erred in not reversing the judgment of the District Court.

(f) The Circuit Court of Appeals erred in failing to order that the writ of *habeas corpus* applied for herein be granted petitioner.

V

ARGUMENT

I

The Use In The Trial Of Petitioner Of The Statement Extorted From Him Before Trial, Through Compulsion, Duress And Coercion, As A Confession, And Upon Which The Verdict Is

Based Was Not A Mere Trial Error Or Irregularity, And Waived Because Not Objected To At The Trial, But Constituted "A Wrong So Fundamental That It Made The Whole Proceeding A Mere Pretense Of A Trial And Rendered The Conviction And Sentence Wholly Void," And "The Proceeding Thus Vitiated Could Be Challenged In Any Appropriate Manner."

The use of the statement obtained from petitioner, was not objected to at the trial. The District Court herein in the *habeas corpus* proceedings held that the errors complained of, if error at all, constituted a trial error or irregularity which could and should have been corrected on appeal (R. 305). The Circuit Court of Appeals while stating that it reviewed the record herein, stated that petitioner made no complaint as to the use of the statement as evidence in the trial, nor did he seek review in this Court (R. 30). That because no objection was made to the use of the confession at the criminal trial, if the same was coerced, and upon which the conviction was based, such use thereof was not a mere error, but as said by this Court, in *Brown v. Mississippi, 297 U. S. 278, supra,* wherein a similar issue was raised, "but a wrong so fundamental that it made the whole proceeding a mere pretense of a trial and rendered the conviction and sentence wholly void." Citing *Moore v. Dempsey, 261 U. S. 86, 67 L. ed. 543.* And this Court further stated in *Brown v. Mississippi,* that a conviction and sentence void for want of the essential elements of due process, "the proceeding thus vitiated could be challenged in any appropriate manner." Citing *Mooney v. Holohan, 294 U. S. 103, 79 L. ed. 791.*

In *Mooney v. Holohan, 294 U. S. 103, supra,* cited by this Court as authority that where a proceeding vitiated

for want of the essential elements of due process could be challenged in any appropriate manner, the use of petition for writ of *habeas corpus* in the federal court against a conviction and sentence in a state court was approved, provided that petitioner exhausted all available remedies as provided by that state. ~~be exhausted.~~ That then, and under such circumstances, the petitioner could challenge his conviction and sentence for deprivation of life or liberty without due process of law. That *habeas corpus* in the federal court under such circumstances is available, see also *Moore v. Dempsey, 261 U. S. 86, 67 L. ed. 543*, cited in *Brown v. Mississippi, supra*, and *Frank v. Mangun, 237 U. S. 309, 59 L. ed. 969.*

That where the claim, as in the instant case, that the statement was obtained in violation of due process of law, the federal court will determine the validity of the claim, and as this Court in *Lisenba v. California, 86 L. ed. (Vol. 3 Advanced Sheets) 179, 189*, said "The performance of this duty cannot be foreclosed by the finding of a court, or the verdict of a jury."

Petitioner herein exhausted all available remedies in the State Court of Georgia, and the proceeding herein by petition for writ of *habeas corpus* is open to him, and this Court will determine the validity of his claim.

II

Due Process Of Law Requires Observance Of Fundamental Fairness Essential To The Concept Of Justice And Is Violated When A Coerced Confession Is Used As A Means Of Obtaining A Verdict Of Guilty.

In *Lisenba v. California, 86 L. ed. (No. 3 Advanced Sheets) 179,* this Court at page 188 said:

> "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complanied of must be of such quality as necessarily prevent a fair trial. Such unfairness exists when a coerced confession is used as a means of obtaining a verdict of guilt. We have so held in every instance in which we have set aside for want of due process a conviction based on confession."

That without the statement of petitioner, he could not have been indicted or tried, and upon which his conviction was based as the required corroboration under the Code of Georgia. Also, this confession was used as sworn testimony at his trial, and which petitioner could not contradict under oath. The petitioner herein was prevented under the Code of Georgia of 1933 Sec. 38-415 from testifying under oath in his behalf. See *also Roberts v. State, 189 Ga. 36.*

That the conviction of petitioner herein was dependent upon the written statement obtained from and used as a confession, we quote from the opinion of the Supreme Court of Georgia on appeal from the conviction, *Smith v. The State, supra,* as follows:

> "T. H. Herd, deceased, was a night watchman employed by several stores located at Rhodes Center in Atlanta. He was found early on the morning of October 16, 1938, in an unconscious condition and seriously injured, lying in the street

somewhere near these stores. The wound from which he was suffering, and from which a few hours he died, had been made by a blow upon the head from some blunt instrument which produced a concussion of the brain. *The State relied for a conviction on the testimony of the alleged accomplice, Raymond Carter, a written statement by the accused made before the trial, and which was presented as a confession made by defendant, and proof of the corpus delicti.*" (Emphasis ours.) And the Court therein further said:

"At the outset the defendant contends that his conviction was without evidence to support it. The testimony of Raymond Carter, defendant's accomplice, is sufficient to authorize a verdict of guilty, if the record shows corroborating circumstances sufficient to dispense with the requirements of the Code No. 38-121, that there be no conviction of felony on the testimony alone of an accomplice. *The State contends that the requisite corroboration was supplied by a sworn statement made by the defendant before his trial, in which he admitted participation in the crime.* Counsel for the defendant urge upon us the point that this statement does not amount to a full confession of the crime, and therefore is insufficient." (Emphasis ours.)

III

The Practices And Methods Used By The Police To Obtain The Statement From Petitioner Were Such As Has Been Denounced By This Court As Constituting Denial Of Due Process Of Law.

In the petition herein we have referred to practices and methods denounced by this Court in *Chambers v. Flor-*

ida, 309 U. S. 227, supra, and referred to similar methods and practices used by the police herein under D II, to which we again call attention. Such methods and practices as arresting without warrant solely upon suspicion, and holding in custody for a period of time from a Sunday night until the following Tuesday at about noon, during which time petitioner could not act on his own volition, but compelled to answer the questions of the police forcing him to give alibis, and they would go and get statements from the people therein named, and bring in some to confront petitioner to contradict him, all to break down the resistance of petitioner and leave him at the mercy of his inquisitors. That during this period of time he could talk to no one but the police, held incommunicado, without formal charge of any crime, without family, counsel, or a single friend when finally, the police accomplished their object and broke down the resistance and as testified by the Captain of Police finally "he broke down and told the story."

Such methods and practices to obtain confessions to be used to convict prisoners, was severely denounced by this Court in *Chambers v. Florida, 309 U. S. 227, supra.* Methods and practices used by the police to break down the resistance of prisoners to make confessions or statements used as confessions had been previously denounced by this Court in *Brown v. Mississippi, 297 U. S. 278, supra.* That following *Chambers v. Florida,* this Court denounced such methods and practices in *Canty v. Alabama, 309 U. S. 629, supra; White v. Texas, 310 U. S. 530, supra; Lomax v. Texas, 313 U. S. 544, supra; Vernon v. Alabama, 313 U. S. 547, supra.*

Again in *Ward v. Texas,* the latest decision of this Court, decided June 1, 1942 86 L. ed. (No. 15 Advanced

Sheets) 1101, in condemning such unfair practices as sometimes used by the police to obtain confession to be used to convict prisoners, stated instances wherein this Court set aside convictions based upon confessions, citing the above cases, and enumerated circumstances that required reversal of convictions as involving violation of due process of law, two of which are applicable to the instant case, to-wit:

1. Where confessions are extorted from ignorant persons who have been subjected to persistent and protracted questioning.

2. Where persons who have been unlawfully held incommunicado without advice of friends or counsel.

That in view of the foregoing decisions of this Court, the decision of the Circuit Court of Appeals herein, in holding that the manner in which the statement from petitioner was obtained, did not constitute a violation of due process of law, is in direct and irreconciliable conflict therewith, and upon an important question of general law.

IV

The Circuit Court Of Appeals In Affirming The Judgment Of The District Court Denying The Writ Of Habeas Corpus Giving As Reason Therefor That The Statement Was Voluntarily Given By Petitioner Thereby Decided An Important Question Of Law In Conflict With The Weight Of Authority.

We will not repeat the circumstances under which the statement was obtained by the police. The Circuit Court

of Appeals in referring to certain of the facts and circumstances surrounding the obtaining of the statement said:

> "The next morning, Tuesday, he was questioned again, and again denied that he participated in the crime. Then after being advised that Raymond Carter had told the officers about the crime, and after being confronted with Carter, Smith (Petitioner) said he would tell the truth. He then told the story that was incorporated in his signed statement" (R. 319).

That omitting other very material conceded facts, the fact that petitioner, as stated by the Circuit Court of Appeals had been held in custody by the police, denied that he participated in the crime, and again denied it, and being then advised by the police that Raymond Carter, who was also held in custody, had told the police that he, petitioner, had told the officers about the crime, and petitioner being then confronted by Carter, such impelled petitioner to make a statement, which otherwise he would not have done. Placing a prisoner in such position, and especially, as the conceded facts show, petitioner had been told that Carter had told the police that he, petitioner, committed the murder, has been held by this Court as such influence to constitute a statement thereafter made involuntarily. We refer to the decision of this Court in *Bram v. United States, 168 U. S. 532, 42 L. ed. 568.* In that case there was involved a seafaring man of mature age who had been a first mate, and who acted as captain of a ship. He was suspected of having committed murder on board ship, and upon arrival at an American port was placed in custody of detectives. Another member of the crew also was held in custody upon suspicion. That while Bram was held in custody he gave a statement that was used against him in his trial, and the

question determined by this Court was whether or not it was voluntary. There was no evidence that any physical torture was administered, nor any threats made that such would be done to Bram. The issue involved was as to whether or not the statement given under the circumstances as follows was voluntary. As to this, this Court quoted from the testimony of the detective, as follows:

> "When Mr. Bram came into my office I said to him: 'Bram, we are trying to unravel this horrible mystery!' I said: 'Your position is rather an awkward one. I have had Brown in this office, and he made a statement that he saw you do the murder.' He said: 'He could not have seen me. Where was he?' I said: 'He states he was at the wheel.' 'Well,' he said, 'he could not see me from there.' "

This Court in the above case, rendered what is very often cited and referred to by federal and state courts in determining a question as to whether or not a confession was voluntary, as a very authoritative opinion. American and British authorities were discussed therein, and this Court concluded that the statement of the detectives to the prisoner held in his custody, that some member of the crew saw the prisoner commit the murder, no doubt created an influence on the prisoner, and as the law cannot measure the force of the influence, or decide upon the effect upon the mind of the prisoner, the statement then given by the prisoner must be held involuntary.

The facts and circumstances in the *Bram* case, are similar to certain of the facts and circumstances in the instant case as found by the Circuit Court of Appeals, but the Circuit Court of Appeals held herein that the statement

was voluntarily given, a decision in direct and irreconcilable conflict with the decision of this Court in the *Bram* case.

In *Sorenson v. United States, 143 F. 820*, the Circuit Court of Appeals for the Eighth Circuit referred to the authoritative opinion of Mr. Justice White in *Bram v. United States, supra*, and held that a statement by the police officer to a prisoner, that he had an absolutely good case on him, that this alone was "legally sufficient to engender the mind of the accused hope or fear in respect of the crime charged, and which would render a subsequent confession involuntary and inadmissible as evidence."

In *Purpura v. United States, 262 F. 473*, the Circuit Court of Appeals for the Fifth Circuit in following the *Bram* case, *supra*, held:

> Where defendant, charged with stealing a package from the post office, where he was employed, was taken in charge by five inspectors and held 24 hours, without being permitted to communicate with friends or procure counsel, being compelled to sleep in the room with one of them, and being told that they believed him guilty and had evidence which made it look bad for him, a confession, written by the inspectors, but signed by him at the end of that time, held involuntary.

The decision of the Circuit Court of Appeals for the Fifth Circuit upon the face of its opinion herein, decided an important question of general law, contrary the decision of this Court in the *Bram* case, *supra*, and contrary to the above decisions of the Circuit Court of Appeals for the Eighth and Fourth Circuits, and upon which holding af-

firmed the judgment of the District Court in denying the writ of *habeas corpus.*

V

It Is Respectfully Submitted That The Writ Should Be Granted And The Decision Of The Circuit Court Of Appeals Be Reversed, With Instructions That The Writ Of Habeas Corpus Applied For By Petitioner Be Granted.

We quote from the opinion of this Court in *Chambers v. Florida, 309 U. S. 278, supra,* wherein practices and methods were used, as in the instant case, to break down the power of resistance of the prisoners and leave them at the mercy of their inquisitors, and as to which this Court said:

> "To permit human lives to be forfeited upon confessions thus obtained would make of the constitutional requirement of due process of law a meaningless symbol."

Respectfully submitted,

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